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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re V.L. et al., Persons Coming Under  
the Juvenile Court Law.

B204419

(Los Angeles County  
Super. Ct. No. CK69458)

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,  
Marilyn Mackel, Commissioner. Affirmed in part, dismissed in part as moot.

Cameryn Schmidt, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County  
Counsel, and Judith A. Luby, Deputy County Counsel, for Plaintiff and Respondent.

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In this dependency proceeding the juvenile court sustained the petition as to two teenage sisters, V.L. and E.L., finding jurisdiction under Welfare and Institutions Code section 300, subdivisions (a), (b) and (j).<sup>1</sup> The court entered a dispositional order removing the minors from the custody of R.L. (Father) and releasing them to the custody of C.L. (Mother). The court also issued a restraining order against Father. On appeal, Father maintains the evidence is insufficient to support jurisdiction and the restraining order.

While this appeal has been pending, V.L. became an adult and the appeal of the jurisdictional orders relating to her are moot. Also during the pendency of this appeal the juvenile court vacated the restraining order, imposed a new restraining order and terminated jurisdiction.<sup>2</sup> That action moots Father's challenge to the restraining order but not his challenge to jurisdiction as to E.L., so we consider that challenge on its merits.<sup>3</sup> We find that substantial evidence supports dependency jurisdiction and affirm the order.

## **FACTUAL AND PROCEDURAL BACKGROUND**

V.L. (V.) and E.L. (E.)<sup>4</sup> came to the attention of the DCFS on August 6, 2007 after Father threw a remote control at V., who was then 16 years old, striking her in the back of the head, and slapped or punched her in the face during an argument. After

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The orders terminating jurisdiction and imposing a new restraining order were the result of a hearing on September 18, 2008 and were based upon a report prepared by DCFS. We have not been provided with a copy of that report nor have we been provided with a transcript of that hearing.

<sup>3</sup> Since the jurisdictional issues were actually litigated in the dependency proceeding, Father's substantial rights are affected because he would be collaterally estopped from relitigating those issues elsewhere, such as in a future family court proceeding on custody and visitation relating to E.L. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548; but see contra, *In re Michelle M.* (1992) 8 Cal.App.4th 326, 328-330.)

<sup>4</sup> V.L.'s birthdate is November 1990. E.L.'s birthdate is September 1992.

interviewing the minors and Mother and Father, the DCFS worker concluded that there was sufficient evidence of physical abuse on the part of Father to justify a dependency petition as to both girls under section 300, subdivision (a) [serious nonaccidental physical harm], subdivision (b) [serious physical harm resulting from parent's lack of supervision and substance abuse], and (j) [substantial risk of abuse or neglect of a sibling of an abused minor]. The petition also alleged that Mother failed to protect the minors from physical abuse.

The evidence at the jurisdictional hearing consisted of the DCFS jurisdictional report, documentation showing that Father was attending a domestic violence program and individual therapy and had completed a parenting class, and documentation showing that Mother was participating in parenting classes and individual counseling to address domestic violence issues. After stating that it had read and considered the reports and the parents' documents and the arguments of counsel, the court struck the petition's allegations as to Mother, sustained the petition as to Father and declared the children dependents of the court. The court made a dispositional order releasing the girls to the custody of Mother and issued a restraining order against Father.

Father filed a timely appeal from the orders.

#### **A. Physical Harm to V.**

Although V. is now an adult, the evidence of physical harm inflicted on her is relevant to the determination whether sufficient evidence supported the jurisdictional finding relating to E. Subdivisions (a) and (b) of section 300 require proof that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm." Subdivision (j) requires proof that "[t]he child's sibling has been abused or neglected, as defined in subdivision[s] (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions." In making its determination, "[t]he court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other

factors the court considers probative in determining whether there is a substantial risk to the child.”

In the case before us, the evidence consists of statements by V., E., Mother and Father as communicated to the court by the DCFS worker in her jurisdictional report.

According to the worker, V. gave the following account of Father’s conduct. The incident that gave rise to the petition occurred in August 2007 when V. was 16 years old. Father came home one afternoon when V. was playing rap music loudly on the stereo. The song “had bad words in it” and Father “got mad at the lyrics.” Father asked V. to turn down the music but V. refused. When Father turned down the music, V. turned it back up. Father threw a pillow at V. but she still refused to turn down the music. As V. started walking to her bedroom, Father threw the stereo’s remote control at her striking her on the back of her head near her neck. “It hurt and made me cry,” V. told the DCFS worker. V. continued on to her room and Father followed her. When they got to her room, they continued arguing. Father called her stupid, a fool and a moron. He said that the mother was a whore. When V. said she was going to tell the mother what the father had said, he got even angrier. Father pushed V. against her bed and “socked” her in the face with a closed fist, near her mouth. Although there were no outward signs of cuts, bruises or blood on V., this caused a “small cut” on the inside of her lip. After striking V., Father left the house, and the girls called Mother at work and told her what had just happened.

Mother informed the DCFS worker that she took the girls to the local police station where V. made a report. Father was not arrested or charged in the incident. The police referred the matter to the DCFS. V. did not require treatment from a doctor, dentist or other health care provider for her cut lip. There was no evidence that Father had been drinking prior to the incident.

In her interview with the DCFS worker, V. also reported that one night in 2002, when she was 12 years old, she stayed out past her 10:00 p.m. curfew. When she arrived home at 10:45 p.m. Father hit her on her legs with his hand.

V.'s younger sister, E., told the DCFS worker that she witnessed the August 2007 incident and corroborated V.'s description of Father's conduct except she believed Father slapped V. rather than hitting her with his fist. She also told the worker that she saw Father strike V. two other times. On one occasion in 1999, when V. was nine years old, Father struck V. twice with his belt. On another occasion, in 2004, Father gave V. a "real slap [across the face] . . . with an open hand." She also stated that seven or eight years earlier Father had hit V. with a belt and that four years earlier Father had slapped V.

### **B. Physical Harm to E.**

E. reported that two days before the incident with V. over the rap music, she was sitting on the steps of her apartment building when Father pushed her and hit her on her arm with his elbow, and called her stupid. She lost her balance but did not fall. Nine years before that Father hit her on the back of her head. And, a year before that, Father hit her in the face causing her nose to bleed but E. believed that might have been an accident.

### **C. Domestic Violence**

V. told the DCFS worker that her parents engage in angry verbal exchanges and that Father calls Mother rude names. V. said she had seen Father "get in my mom's face and get really close to hitting her, but that's it." She denied ever seeing any physical violence between her parents, except for the time Mother hit Father with a lollipop, and she stated she has never seen any bruises on Mother that might have been caused by Father hitting her.

E. told the DCFS worker that in 1997, when she was five years old, she first saw problems between Father and Mother. Father would come home drunk and batter her mother by hitting her on the arms and one time slapping her on the face and breaking her nose. In 2003, she said, Father "really beat up my mom bad." E. said she last saw physical violence between her parents approximately two months earlier when Father grabbed Mother "by the arms when she threatened to leave him."

Mother stated that Father used to get drunk and beat her. The children did not witness this, however, because they were usually in their room asleep. Father had not beaten her in the last six years, she stated. Father used to hit her with his fists on the back of her head and face. He once punched her in the face causing her nose to bleed. Once he put a knife to her back. On another occasion he placed a gun to her head and threatened to kill her and her mother. Father had been emotionally and verbally abusive to her and the children for a very long time. Mother stated that the source of arguments between her and Father was his drinking. "He would always come home drunk and start to argue with me." "When he wasn't drinking, he was OK." He had not been drinking since they came to this country.

There is no prior child welfare history for the family and no criminal history for either parent, and no evidence that either child ever required medical attention for an injury resulting from parental abuse.

#### **D. Father**

In his interview with the DCFS worker, Father denied throwing the remote control at V. but admitted "slapp[ing] her, softly, with the tips of [his] fingers." He denied striking V. any other time. Father denied ever assaulting his wife in the past.

The minors, Mother and Father agreed that Father had stopped drinking heavily although they disagreed as to exactly when this occurred. E. stated Father stopped drinking "about 2 years ago." V. stated it was "about 5 years ago." Mother stated Father "hasn't had any alcohol since being in this country."<sup>5</sup> Father told the DCFS worker that he used to "drink heavily" 10 years ago but he no longer drinks to get drunk. He simply stopped drinking one day, on his own without a program. The only time he now takes a drink is at a meal or a party.

Father submitted evidence showing that he had completed a parenting class and was regularly attending a domestic violence program where, according to his counselor,

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<sup>5</sup> It is unclear from the record how long the family has resided in this country.

he was making “satisfactory and appropriate” progress including “accept[ing] responsibility for his past behavior.” He also submitted a letter from his individual therapist stating that Father “has made significant progress in meeting his therapeutic goals” of “prevent[ing] child physical abuse, learning and using anger management skills, and improving parent-child relationship[s].”

## **DISCUSSION**

When reviewing jurisdictional findings, we look to see if they are supported by substantial evidence, contradicted or not. We resolve conflicts and draw all reasonable inferences to support the findings and review the record in the light most favorable to the juvenile court’s determinations, bearing in mind that issues of fact and credibility are the province of the trial court. We do not reweigh the evidence or exercise independent judgment. (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) “Evidence, to be ‘substantial’ must be ‘of ponderable legal significance . . . reasonable in nature, credible, and of solid value.’ [Citations.]” (*People v. Johnson* (1980) 26 Cal.3d 557, 576.)

We conclude that substantial evidence supports the trial court’s order sustaining the petition’s allegations that E. “has suffered, or there is a substantial risk that the minor will suffer, serious physical harm” as set forth in section 300, subdivisions (a), (b) and (j).

Although not the worst case of abuse we have seen, the evidence is sufficient to show that V. suffered serious physical harm. Father threw a stereo remote control at her, pushed her down on the bed and then slapped or punched V. resulting in a cut inside V.’s upper lip. Father had physically abused V. in the past. Likewise, Father has been physically and verbally abusive to E. There is a substantial history of domestic violence in which Father assaulted Mother while the children were in the home, including putting a knife to her back and a gun to her head and threatening to kill her. Father has a history of alcoholism for which he has received no therapy or counseling, and has engaged in substantial violence towards Mother when he was drunk. Even though the acts of domestic violence occurred several years before, when the family lived in Mexico, we

conclude that there remains the substantial danger that this behavior will recur, exposing E. to substantial risk of physical harm.<sup>6</sup>

### **DISPOSITION**

The order sustaining the petition is affirmed. The appeal from the restraining order is dismissed as moot.

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WEISBERG, J.\*

I concur:

MALLANO, P. J.

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<sup>6</sup> “For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)

\*Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



ROTHSCHILD, J., Dissenting.

I dissent from my colleagues' conclusion that the evidence supports the juvenile court's finding that E. “*has suffered, or there is a substantial risk that [she] will suffer, serious physical harm*” as set forth in Welfare and Institutions Code section 300, subdivisions (a), (b) and (j) (italics added).<sup>1</sup>

This family came to the attention of the DCFS because Father lost his temper and hurled a remote control at his then 16-year-old daughter, V., because she refused to turn down the rap music on the radio. Father followed up this assault by either slapping or punching V. in the face causing a minor cut inside her mouth. The injury did not require stitches or any other medical attention by a health care provider or by the child's mother and thus does not support a finding of serious physical harm. (Cf. *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1130, 1134-1135 [one slap which caused bruises and swelling insufficient to sustain petition under subdivision (b)].) Likewise, the evidence does not support a finding that any previous incidents involving V. which occurred four, five and seven years earlier caused her *any* physical harm much less “serious” harm.

As to E., the evidence showed that two days before the incident over the rap music, E. was sitting on the steps of her apartment building when Father pushed her and hit her on her arm with his elbow. Nine years before that Father hit her on the back of her head. And, a year before that, Father hit her in the face causing her nose to bleed but E. believed that encounter might have been an accident. “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) The undisputed evidence in this case showed that the only serious injury Father ever inflicted on E. occurred 10 years earlier and may have been an accident and that at the time of the jurisdictional hearing Father

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

was regularly attending a domestic violence counseling program and individual anger management therapy and making satisfactory and appropriate progress in each.

In support of the finding of a substantial risk of future harm to E., the DCFS points to instances of Father's abuse of Mother six years earlier, when he was drinking heavily, and argues that Father's unemployment might cause him to start drinking again which could lead him to physically abuse Mother again.

Speculation that Father might start drinking again and inflict physical violence on Mother cannot support a petition under section 300, subdivision (b). (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393 [speculation and conjecture will not support jurisdiction].) The undisputed evidence shows that Father's physical abuse of Mother stopped along with his drinking many years ago. Mother and Father continue to argue but there is no evidence of current violence.

Accordingly, I would reverse the jurisdictional finding as to E. and dismiss the remaining appeals as moot.

ROTHSCHILD, J.